

The Journal

GSM suit against District 88 could have second hearing

NEW ULM — A second hearing, this time for a permanent injunction, could be coming down the line in Gag Sheet Metal Inc.'s (GSM) suit against ISD 88.

Fifth District Judge Todd Westphal's decision, filed Friday, Dec. 30, detailed why he denied the injunction. In the decision he did leave the case open for a possible reconsideration.

"It is not at all common for a court to allow one of the parties to ask for reconsideration and I think the judge did that partly because of the fact that all of this, necessarily, had to come together on such short notice," GSM's attorney Roger Hippert said.

The motion hearing Thursday, Dec. 28, was to decide on a Temporary Restraining Order (TRO) and temporary injunction requested by GSM. Because a TRO is usually filed without a hearing first, Judge Todd Westphal considered it a hearing on the temporary injunction, which he rejected in a decision filed Friday, Dec. 30.

Even though the temporary injunction failed, the court is expecting to hold another hearing about a permanent injunction. That, however, depends on the Board of Education's decision on who gets the middle school re-roofing bid.

"If they go ahead and agree to award the job to the lowest bidder I am assuming we can all then move on and there would not be a need to return to court for any reason," Hippert said.

The school board probably will not decide on the bid until sometime in January. Whatever they decide, the defense is confident that it can hold up in court.

"I think the process with a more fully developed trial will reflect what the judge opined in his decision in that we would be likely to prevail on the merits," District 88 Attorney James Stromme said.

The court is expediting the process because the school has 45 days from Dec. 29 to make a decision on the bids submitted for the New Ulm Middle School re-roofing project before they expire.

When deciding a temporary injunction or TRO, Minnesota courts use five factors laid out in the Minnesota Supreme Court decision on Dahlberg Brothers Inc. v. Ford Motor Company.

In that case the Dahlberg Ford dealership in Hopkins sued Ford Motor Company to prevent Ford from ending the franchise agreement between the parties.

The factors are: the relationship between the parties, the relative harm suffered by the plaintiff or defendant if the injunction passes or not, the likelihood of success on the merits, public interest and policy relating to the case and administrative burden.

The two factors primary to Westphal's decision were the relative harms and the merits of the case.

GSM argued the harms if the injunction did not pass was a loss of revenue and increased cost to taxpayers.

The judge found that GSM's other argument about delaying the bidding process having little adverse effects on the work timeline painted the job as a smaller one. If it was that small, Westphal concluded, the loss of income would not be significant enough to cause irreparable harm.

As for costing taxpayers, Westphal considered that if GSM was correct, redoing the plans for the roof would only bring down the price for an EPDM (ethylene propylene diene monomer) or rubber roof. Due to the built-up being preferred by ISD 88, the factor favored denying of the injunction, Westphal's decision stated.

The defense won over the judge with an argument against delaying the project. Due to a domino effect involving repairing the gym floor the school needed the roof repaired as soon as possible.

Because both pricing arguments were speculative, Westphal found them lacking. He did state that prices generally increase over time, and in this case that ruled against the injunction.

On the merits of the case, Westphal disagreed with the plaintiff. His decision stated that GSM's interpretation of state statutes surrounding the drafting of plans and speculations too restrictive.

GSM argued that because the roof plans had not been prepared by the licensed engineer himself or under his direct supervision, but only reviewed by him, it violated the law.

The judge found that the law allowed for a wider interpretation of direct supervision. GSM also did not provide enough evidence to indicate that the engineer was rubber-stamping Tremco Inc.'s plans.

Westphal found the factors of the relationship between the parties and the public interest in the case to be a wash.

Their relationship appeared to be a standard professional one, the decision stated. The public interest was balanced on the need for a fair bidding process and wise use of the

school's resources.

The administrative burden was virtually none. Westphal found that favored the plaintiff, but not enough to get the injunction.

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